KENYA INDUSTRIAL COURT
CAUSE NO.10 OF 1965

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D.2.

FINAL SUBMISSIONS OF E.A.R. & H. ON THE ISSUE OF "MINIMUM WAGES TO BE RAISED TO SHS.250/- PER MONTH"

The declared policy of E.A.R. & H. in regard to minimum wages is that they should be raised as the financial position permits. Management is very much interested in the welfare of Group 'C' workers and the Unions know it. It is therefore very unfair for anyone to give the impression that this Management is not interested in raising the wages of these people. Again, as soon as Management is able to do so the minimum wages will be raised. Management has so declared to the Court during the course of this hearing and in Appendix 'G' to its main submission (Special Notice No.65 of February, 1960) this principle is unequivocally stated at paragraph 25 as follows:-

> " As already indicated, the Railways management is particularly concerned with the staff on the lowest rates of pay. As the net revenue position improves by increased revenue or reduced expenditure or a combination of both, it is proposed - after taking steps to maintain the long term financial health of the undertaking - to devote available resources to raising the minimum wage. "

2. Evidence that E.A.R. & H. has adhered to this policy is provided by the increases in minimum rates agreed since 1960. These are -

Nairobi	From Shs.95/- to Shs.175/-	i.e. + 84%
Kampala	From Shs.78/- to Shs.175/-	i.e. + 124%
Dar es Salaam	From Shs.78/- to Shs.175/-	i.e. + 124%
Basic Minimum) throughout East Africa) outside towns)	From Shs.78/- to Shs.140/-	i.e. + 80%

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The last increases granted in November, 1964, will, in the full year 1965, cost £250,000. They were in fact granted at a time when the financial position, as it then was, could not sustain such an increase without special increases in the tariff being authorised in order that the increased cost could be offset.

3. The increases introduced in November, 1964, were negotiated with and agreed by the Railway African Union (Kenya) together with other Railway Unions. The financial position of the Railway was put frankly before them; they were told that the Ministers had agreed that the Administration could, provided Central Legislative Assembly appro ed the tariff increases, afford to spend an additional £250,000 on wages in 1965 but no more. At the Central Joint Council meeting in October, 1964. all Unions were advised of this offer and asked how they thought such a sum could be distributed to the best advantage of their lower paid members.

4. The Unions' reactions were, firstly, that they refused to believe that the maximum sum (which the Ministerial Communications Committee had agreed could be devoted to increasing wages) was a quarter of a million pounds a year and they refused to accept that this was the limit of Management's mandate from its governing Ministers. Secondly, they declined to co-operate in working out how such a sum could be allocated to the best advantage. Hence the delay, the threat of strikes, and the actual strikes which took place in Mombasa and Kisumu. In the event, on 4th November, agreement was reached for increases costing the £250,000 which had already been offered the previous month and was distributed on a basis agreed with the Unions.

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5. This was a settlement of the Union's minimum wage claim at that time. No time limit was set on it and it did not inhibit the Unions from pressing for their eventual target of Shs.250/- per month. Management considers that it would have been reasonable for the Railway African Union (Kenya), having achieved a settlement and knowing that the Administration's financial resources were still strained, to wait at least for six months or more before making further claims. Be that as it may, the Union saw fit to initiate a further claim almost immediately but did not attempt to use the agreed negotiating channels by placing the issue before the Central Joint Council. Instead, it issued strike threats in support of a demand which it knew very well could not be met and this must be taken as an indication of the Union's intransigent attitude.

6. Mr. Ottenyo claims that Management has never conceded wage increases except under pressure and when forced to give way has always found the money. But for several years past the Union's demand has been for a minimum of Shs.250/- per month, a rate which even now would involve additional costs of £1½ million per annum, and which two years ago would have cost over £2 million. Clearly Management could not conceded such vast increases and those increases which have been granted over the years were those which could be afforded. The amount which could be afforded for 1965 was and still is £250,000. This was granted in November last year in spite of, rather than because of, strike threats.

7. Management's contention is that the claim settled by the Agreement of November, 1964, should stand for the whole of 1965 and asks the Court to award accordingly. The present claim for a minimum of Shs.250/-, although it

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has been raised several times in the past few years, is a new issue as far as negotiation is concerned. The Union has as yet made no attempt to process it through the proper channels and the Court is asked to advise the Union that if it wishes to persist in this claim it should pursue it in the proper manner in conjunction with their colleagues in the other two countries.

8. In any event Management submits that at the present time its lowest, or Group 'C', rates bear comparison with rates paid to similar employees in industry generally. Although they are lower than those paid by Government and E.A.C.S.O. in Kenya towns, they are higher in areas outside the Kenya towns and in Uganda and Tanzania they are definitely far more favourable. Taking unskilled and semi-skilled wage rates overall, E.A.R. & H. workers cannot claim to be worse off than their counterparts elsewhere. They are indeed better off than many.

9. The Union quotes with approval the urban rates now paid by Kenya Government and the other E.A.C.S.O. services. But Mr. Ottenyo in his summing up avoided the fact that Kenya Government and the rest of E.A.C.S.O. pay less than E.A.R. & H. in the rural areas. He could hardly mention this and sustain his claim that a common minimum rates should apply to both town and country areas. He rejects the principle which at present is recognised by all three East African Governments and is common in all countries where there are large urban communities, and is justified by the lower cost of living away from the main population centres. The Railways and Harbours could not on their own depart from this principle and in the case of the E.A.C.S.O., it is

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something which would have to be decided by all three Governments acting together. Management has given the Court figures to demonstrate that this difference exists and the Union has produced nothing in rebuttal. Differential rates are sanctioned by common practice and economic facts and there is little doubt that if they were abolished the Union would soon be making claims for further increases in the towns on the grounds that the poor urban worker was worse off than his country cousin.

10. There have also been suggestions made both the Claimant and, to some extent, by members of the Court, that the present job evaluation exercise will remove urban and rural differentials. This is not necessarily so as there can still be a basic rate for a job to which an urban differential can be added if the circumstances so justify. On several occasions the Claimant said that the E.A.R. & H. minimum wage should be the same as the Government, but he probably did not mean to imply that this should be so in the case of rural workers where the Government minima are at present consistently below the E.A.R. & H. wage levels.

11. The minimum Group 'C' rates now paid are adequate in relation to present-day costs and standards of living. Management has demonstrated, from independent and authoritative sources, that a small family in Nairobi can live on the minimum wage now paid. The Union has produced no valid evidence to contradict this view; indeed, in his summing up on this issue, Mr. Ottenyo made no reference whatever to the statistical evidence adduced by Management.

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12. The Union's so called "bachelor budget" which was put in early in the proceedings is nothing but an absurdity, an unsupported assertion that a man needs to guzzle three or four times the quantities of food which commonsense, let along medical opinion, indicates as necessary. The Group 'C' witness who was brought on this point enjoyed the sympathy of all in the Court while he unfolded his grim story of poverty and debt, until he admitted that he drank up to 60 bottles of beer a month - then his money ran out. The Court will draw its own conclusions from this evidence. Was he inaccurate on this point? If so, on what other points was he inaccurate? Or is he just hopelessly improvident?

13. Whilst, therefore, E.A.R. & H. is committed to and will pursue a policy of gradually increasing wages at the lower levels, it is submitted that there is no urgent and compelling reason to grant increases at this moment when such a course would aggravate the financial situation - and let there be no doubt that the expenditure of further sums on wages at the present time would worsen the position and delay the time when the Administration could regain financial health. The Administration is not paying low rates in comparison with industry generally and it is not paying wages on which it is impossible to live. Increases will be considered but only as the expansion of the economy and the improved net revenue position allow. At present the Administration is operating in deficit and the reasons for this and the likely prospects are examined in the following paragraphs.

14. Mr. Ottenyo and several of his witnesses alleged that the deterioration in the E.A.R. & H. financial position since 1960 has been due to the heavy payments of

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compensation and related expenses to expatriate personnel. It has however been clearly shown that no part of the cumulative deficiency which has arisen during the three years 1961 to 1964 was in fact caused by payments of compensation. On the contrary the deficiency has been caused mainly by the expenditure on Africanization, particularly the very heavy training costs. Another cause of the deficiency was the exceptional flood conditions which commenced late in 1961 and we are only now shaking clear from the effects of the damage which was caused during that time. Also during the last few years the increase in revenue has been disappointing having increased at a much slower rate than during the previous decade.

15. There was also a suggestion that there was something wrong about the deficit as if it were part of a deep laid plot to prevent increases in minimum wages. Management has consistently repeated its anxiety to raise minimum wages wherever practicable and it is an unworthy suggestion that they should try to place any obstacles in the way of such increases. The E.A.R. & H. Accounts are prepared by professional accountants, they are subject to professional audit and, finally, to detailed scrutiny by the Public Accounts Committee on behalf of the Central Legislative Assembly of East Africa. They are also laid on the table for debate in the Central Legislative Assembly if necessary. Similarly the Estimates for each year are placed before the Central Legislative Assembly and subjected to the most detailed scrutiny by a full Committee of that Assembly. And these estimates since 1962 have consistently forecast the deficits and explained the reasons for them.

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16. The Court has received a note prepared on the 3rd May, 1965, detailing the results of working the Railways and Harbours services during the years 1959 and 1965. Attached as Appendix 'A' to that note was a comparative statement showing in summarised form the results of working the E.A.R. & H. services during the years 1959 and 1963 and the estimated results for 1964 and 1965 were also shown.

17. It will have been noted that the annual revenue during this period increased by £5.5 million from £24.28 million in 1959 to an estimated £29.80 million in 1965. Unfortunately expenditure has risen at an even higher rate, from £23.82 million to £30 million, and although surpluses were earned in the three years 1959 to 1961, there has been a deficit in each year from 1962 to 1964 and the prospect is of another deficit in 1965. The year 1959 opened with a small cumulative deficit of only £0.19 million but the cumulative deficit at the end of 1965 is expected to be about £1¼ million.

18. As already stated, this deficit has been caused mainly by the heavy costs incurred in connection with Africanization and secondly by the cost of making good the damage caused by the floods during the years 1961 and 1962. The deficiency was also caused, to a small extent, by accumulated leave payments to retiring staff. Fortunately the passage costs which might otherwise have also contributed to the deficiency were offset by the British Government meeting half the cost of passages for designated personnel.

19. Staff training for Africanization has, in the last few years, cost about £1½ million which approximately equals the deficit for the same period. The cost of repairing

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flood damage during these years has been about £½ million. Both these costs have been of a purely temporary nature and it is now expected that they have passed their peak. Over a period of years the E.A.R. & H. is expected to break even and it would not have been correct to increase tariffs on account of these purely temporary additional costs. Instead it is hoped to recover the deficit over the next few years.

20. There has been other additional expenditure of a more permanent nature in recent years, the biggest being the additional sums set aside to cope with the very heavy debt redemption problems which will arise during the years 1968 to 1971 and, less acutely, at future dates. Further reference to debt redemption will be made later. These permanent increases in expenditure have however been offset by the increase in traffic and by the recent increases in tariffs.

21. There has also been an allegation that Management have been reluctant to explain the finances of the E.A.R. & H. to the Unions. They have done so on several occasions, most notably in 1960 when the Staff and General Notice No.65 of that year set out the position in great detail. In 1964, at the time when it was agreed to make £250,000 available for an increase in minimum wages, a full explanation was given of the reasons why the financial position did not permit more being granted. On other occasions in the Central Joint Council, reference has been made to the financial position of E.A.R. & H. but the Unions have been reluctant to listen and have adopted the attitude that ability to pay should not limit their claims. We shall

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hope that the Unions can show more understanding of the facts and figures presented to them than Mr. Ottenyo has been able to demonstrate before this Court.

22. A period of consolidation would probably be good for the economy of Easr Africa as a whole and for its major industries in particular. The determined efforts being made throughout East Africa to lift the economy could only be hampered if one section of it got out of line with remainder.

23. It bears repetition that the amount of £250,000 which it was agreed by the Ministerial Communications Committee should be made available to increase the minimum wages was in respect of the year 1965. The offer was first made to the Unions in October, 1964, and they subsequently accepted it in November, 1964, despite the threatened strike which did not take place except in Mombasa and Kisumu. The Ministers additionally agreed that the increases could be effective from November, 1964, which added approximately £50,000 to the 1964 wage bill.

24. <u>The Court is asked to note particularly that the amount of £250,000 agreed in respect of this increase took full account of the anticipated results for 1964 and 1965.</u> The latest estimates indicate that the Railways side of the E.A.R. & H. Administration will still be in deficit during 1965 and it is not considered prudent to increase that deficit by granting a further increase at the present time.

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25. The position resulting from the November, 1964, increase was explained to the World Bank during the recent loan negotiations in December, 1964, and March, 1965, and a full explanation would have to be sent to the Bank if further wage increases took place before the loan is signed or if the estimates on which the negotiations took place were subject to any significant adjustment. Although the revenue has in recent months been buoyant, the improvement in the latter part of 1964 and in the first few months of 1965 was also taken fully into account during the World Bank negotiations.

26. Nevertheless the Management remain anxious to increase minimum wages when such an increase can be justified both by the results of the E.A.R. & H. operations and with regard to the general economy of East Africa. As the economy expands so will the Railways and Harbours traffic and so will the ability of the Railways Administration to pay an increase in the minimum wage.

27. It is however important that there should be no falling off in the present level of productivity. An increase in productivity would advance the rate at which the Railways can pay increased wages. This may well be the only way in which the rate can be improved because, as has already been explained to the Court, we have probably strained to the limit the extent to which tariffs may be increased. The Court is asked to bear in mind the importance of railway charges in relation to the selling prices of the exports on which the E.A. economy is primarily dependent.

28. A Member of the Court asked when the E.A.R. & H. is likely to "come out of the red". At the end of 1964 the net deficit for the E.A.R. & H. Administration as a whole was

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£1,071,000 which is £134,000 more than the cumulative deficit expected at the time when the Respondent's case was prepared (see page 25 of the Respondent's case on Claim for Increased Minimum Wages). The deficit for 1965 was expected to be about £200,000 and although revenue has recently been buoyant it would be unwise to assume that this improvement will continue throughout the year and therefore the estimated deficit of £200,000 is still considered realistic.

29. The 1964 deficit is £134,000 more than anticipated when the Respondent's case was prepared and about the same amount greater than the deficit shown in the note of the 5th May, 1965. The worsening is mainly due to the losses on Branch Lines being less than estaimted. This may at first sound somewhat contradictory but in fact these are Branch Lines on which the Governments make good the losses by reimbursing E.A.R. & H. As the losses are about £90,000 less than estimated, it is the Governments which will gain and the E.A.R. & H. which will lose. These Branch Line losses are only assessable in detail well after the end of the year when all relevant factors have been taken into account.

30. So the cumulative deficit at the end of 1964 is over £1 million and there is little prospect of reducing it by any substantial amount in 1965. As already stated, the increase of £250,000 for minimum wages which will have a full year's effect in 1965 has "creamed off" whatever improvement might otherwise have been expected. But for this wage increase, 1965 might well have seen a small surplus.

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31. Although the net deficit at the end of 1964 is just over £1m., the Railways part of the undertaking shows a slightly greater deficit because the Harbours finished the year with a small surplus. Because of continuing and intensive road competition for a large part of the Railway traffic, we do not expect this relative position between Railways and Harbours to change in 1965. It has already been explained to the Court that it would be very difficult, if not impossible, to get any further significant tariff increases accepted in an "export-hungry" economy.

32. The Administration does however look forward to a continuing increase in traffic and with increasing experience, efficiency and co-operation of the workers, which should lead to improvements in productivity, it may be possible to emerge "from the red" in 1966. Later this year, we shall have a much better indication of the likelihood of these hopes being realised.

33. Mention has already been made of the proposed World Bank loan to the E.A.R. & H. This loan is probably the biggest single loan which has so far been offered to any E.A. organization and it is hoped that the remaining negotiations will proceed to a satisfactory conclusion. However, it cannot be too strongly emphasised that the loan documents have not yet been signed, nor are they likely to be signed for several months to come, and the Court is again reminded that the £250,000 which has been allowed for in 1965 was the sum included in the estimates which were discussed with the Bank when they agreed to offer the loan.

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34. The Bank is of course well aware of the general economy of East Africa as it obtains detailed information from all three E.A. countries as well as from the E.A.C.S.O. It is aware also of the recent tariff increases which were made to improve the Railways and Harbours revenue and the difficulty of making any further tariff increases for Railways traffics which are highly susceptible to road competition.

35. The Bank loan, as indeed is the case with any other loan which the E.A.R. & H. may obtain, is solely for development and renewal purposes and cannot in any way be used to pay for current running expenditure. Any Authority which leds money to a self-contained Administration like the E.A.R. & H. needs to be satisfied that over a period of years that Administration is not only capable of financing its current expenditure by means of revenue obtained from the traffic carried but also has a margin of revenue over expenditure which can be ploughed back into the industry. The current costs of borrowing externally are very high and it is important that as much as our internal resources as possible be devoted to development and renewal purposes if we are to avoid a very heavy burden of interest/charges falling for a long period on the future users of the Administration's services.

36. The Court is asked to consider very carefully the likely financial position of the E.A.R. & H. for several years to come. Although it is hoped to "emerge from the red" possibly in 1966, the largest call upon any surpluses which may be made will be to extinguish the accumulated deficit of over £1 million. This does not mean to say that there will be nothing available for additional wages but it will not

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be possible to increase wages to a point which would absorb the whole of any potential surplus because it is most important that the accumulated deficit be recovered over a comparatively short period, so that the E.A.R. & H. regains world recognition of its underlying financial soundness and is equipped to deal with future debt redemption problems.

37. Reference has been made on page 30 of the Respondent's case (paragraph 27, sub-paragraph 10) to this very serious debt redemption problem which faces the E.A.R. & H. during the years 1968 to 1971. During those four years some £28¼ million of previous borrowings will fall due for redemption and steps which the E.A.R. & H. has so far been able to take will enable only about £16 million to be redeemed in cash or, in the case of E.A.R. & H. and other Government holdings, readily exchanged for new financial issues. Thus about £12 million has to be repaid or refinanced from other sources during the years 1968 to 1971 or earlier.

38. Either the lenders of this remaining £12m. will ask for their money to be returned or, if the E.A.R. & H. financial position is satisfactory, they may be persuaded to convert their holdings into new issues of stock for similar amounts. New lenders may also be attracted, but unless the E.A.R. & H. is out of the red (and unless the East African position generally inspires confidence in world money markets) there is little prospect of making new issues to cover this £12 million except at prohibitive interest rates.

39. The E.A.R. & H. has been endeavouring for several years past to increase the amounts it can put aside each year to deal with this problem of the remaining millions

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to be found during the years 1968 to 1971. The measures so far taken have met with considerable success and it is particularly encouraging that the world market prices of E.A.R. & H. stocks have been rising slowly in recent months. They are still, however, well below the level at which refinancing would be a practicable proposition and they are only likely to rise to the desired levels if the E.A.R. & H. has reasonably successful years in 1966 and 1967 so that the necessary refinancing operations can be commenced in 1968 or earlier if market conditions are favourable.

40. The Claimant stated that the Harres Commission pointed out that by accepting all the Harres recommendations there should be a net saving rising ultimately to about £390,000 per annum. This of course would be mainly obtained from the lower Harres salaries payable to Group 'B' and above compared with those paid under Flemming. None of this net saving has yet been achieved. It is still in prospect. But if the Claimant is now saying that these savings (or the prospect of them) should be used to help pay for increased wages for the Group 'C' workers, is he in fact withdrawing his case for the Group 'B' workers to revert from the Harres to the Flemming scales? He cannot have it both ways.

41. You enquired, Mr. President, about the relevant Minutes preceding the increase in minimum wages granted in 1964. There were of course numerous consultations among the Management and with the Ministers prior to this. The Claimant has tried to give the impression that the increases resulting from the £250,000 per annum which the Ministers agreed last year should be made available for wages would not have been made unless the Unions had exerted considerable pressure.

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42. It is true that in July, 1964, Management took the view that no increases were practicable but later, with the improving trend in revenue and with the prospect of introducing improvements to the tariffs with effect from 1st January, 1965, it was the Management which suggested to the Ministers that in consideration of all the circumstances a further £250,000 per annum might be made available. Again, it should be emphasised that this amount was in respect of 1965 and it was only as an additional concession that it was agreed to make it available with effect from 1st November, 1964, two months before the compensating tariff increases came into effect.

43. The Claimant has on many occasions alleged that no increases have been made except as a result of Union pressure. This is only partly true because, to quote an example, it was the Management which proposed the setting up of the Harres Commission and one of the results of that Commission was to increase the minimum wage. In fact the final increase to Shs.130/- was greater than the Union had expected at that time.

44. The Claimant has said that when an award has been made in the past, the money has always been found, implying that if the Court made an award on the issues now before them, then, somehow or other, the E.A.R. & H. would have to find the money. This again is true, but the Court have been made fully aware of the dangers of an award which is not consistent with the East African economy or with the ability of the Administration to pay.

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45. Until revenues improve, any further award would mean either economies in manpower, which might lead to extensive redundancy; or pressure to increase tariffs still further, which would be equally seriously resisted by Governments and all interested parties; or a melancholy addition to the existing deficit which would reduce the credit-worthiness of the E.A.R. & H. in particular and East Africa in general, prejudicing the prospect of further loans and even, possibly, prejudicing the completion of negotiations on loans which have already been promised.

46. The Claimant quoted extracts from recent proceedings of the Chamber of Commerce which emphasised the difficulties which the E.A.R. & H. has been facing in recent years when, instead of a progressive increase in traffic as was formerly the case, the Administration has had to deal with periods of comparatively slack revenue followed by sudden upsurges such as that which East Africa is enjoying at the present time. One of these extracts included the statement that ....."Increased traffic may be due to anticipation of increased import duties and import restrictions". No one can say whether this is true and it is indeed difficult at any time to assess whether an upsurge of traffic is likely to be maintained and for how long.

47. It would therefore be unwise to base any increase in wages on an assumption that the present buoyant revenue will continue for the remainder of this year. As already stated, towards the end of 1965 we shall be in a much better position to assess our future ability to pay. The assessment of our present ability to pay, which was made in some detail when wages were increased at the end of 1964, has so far proved fairly accurate.

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48. The Claimant, in mentioning the difficulty which E.A.R. & H. has had recently in meeting all traffic demands, suggested that it was due to inefficiency on the part of Management that sufficient wagons were not available. Additions to the wagon fleet are normally made on the basis of anticipated and progressive increases in traffic and additional wagons are continually become available. At the present time about 600 wagons are on order and as most of these average 40 ft. in length, it is perhaps interesting to note that these wagons, stretched end to end, would extend for nearly 5 miles. By any standard this provides impressive carrying capacity. Even so, it is only a fraction of the total wagons which it is hoped to purchase with the World Bank loan, provided it is brought to a satisfactory conclusion. The total wagons which it is hoped to put into service in 1966 and 1967 would cover a distance of about 15 miles.

49. Another criticism made by the Claimant was that full train working has not always been achieved on Sundays. At one time we had great difficulty in securing even partial working at the ports on Sundays, but thanks to increasing co-operation from the dockworkers this position is now being remedied. We have also had to persuade commercial interests both at the ports and at receiving centres inland to be prepared to work additional hours over the weekends in order to clear the traffic.

50. Another aspect, Mr. President, which we must bear in mind on this whole question of wagon availability is that it is necessary to hold a fairly delicate balance. It could be equally serious financially if we had an excess

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of wagons because they could only have been purchased from loans and other monies which would attract interest charges and if these interest charges proved too high at a time when full traffic is not offering, it would reduce any ability to pay higher wages.

51 This particular wage dispute, like some other recent wage claims in East Africa, illustrates the dangers of setting claims too high in the first instance. In the E.A.R. & H. there have been continual disputes over wages because the Unions have always set their claims far too high. The increases finally awarded have in each case been fairly close to what could really be afforded under recent conditions. To set a target, knowing full well that it can only be achieved through an ultimate major improvement in the economy, may be good Union propaganda, but it is bound to result in claims being only partially and gradually conceded as the economy permits.

52. This in turn leads to the frustration of the Union's members to which the Claimant has so often referred, It leads also to strikes, or the risk of strikes, and in the worst case, to violence such as that which has been referred to in another dispute before this Court. In addition these conditions can damage the reputation of East Africa as a whole. Mr. Ottenyo has often referred to the difficulties he has experienced in explaining partial awards to disgruntled workers. I suggest the remedy lies in his own hands by making reasonable claims in the first instance. At one stage Mr. Ottenyo told the Court that his Union was prepared to accept less than Shs.250/- per month. It is a pity that he has not educated his members accordingly instead of telling them, as he apparently did in Mombasa and elsewhere, that

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if they did not get Shs.250/- they should go on strike and they should not return to work until he personally came and explained to them the reasons why they should return.

53. The Claimant spent some time trying to persuade the Court that he would willingly sacrifice certain Welfare and other activities which his members at present enjoy if the amounts thus saved could go towards an increase in the minimum wages. I doubt very much whether such an action would be accepted by those who enjoy the very extensive welfare facilities which the E.A.R. & H. provide. It is the Management's hope that a further increase in wages can be paid in due course without sacrificing any such facilities and to do so would be considered a most retrograde step.

54. Mr. Ottenyo also spent some time trying to show that expenditure on hotels and catering could be cut down and utilised to pay increased wages but unfortunately he mentioned only the expenditure on these items and took no account of the revenue. The Court's attention was drawn to the fact that on the basis of the figures in the 1965 Estimates the net saving by cutting out hotels and catering altogether would only be about £8,000 per annum. The inconvenience to the travelling public would be out of all proportion to this small saving and the small saving itself would soon be more than absorbed by the reduction in numbers utilising the Railways' passenger services.

55. The Claimant suggested that if Management resisted wage increases his members would deliberately decrease productivity. Mr. President, Sir, I ask the Court

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to consider which should come first. A willingness to increase productivity or a willingness to increase wages? Perhaps both should come together, but we require more striking demonstration of willingness to increase productivity than we have so far received from the Unions. Nevertheless we acknowledge that there should be more effort by Unions and Management to get together to discuss ways and means by which productivity can be increased and we shall make every endeavour to this end.

56. The Claimant suggested that in many countries the Railways are subsidised and that the same desperate course should be followed in East Africa if the Railways continued in deficit and were unable to pay wage increases. He apparently ignores the fact that Governments who subsidise their Railways have to find the money to do so, either out of general taxation or by borrowing. Would the E.A. taxpayers willingly pay extra taxes to provide increased minimum wages for Railway workers? In particular would Ugandans and Tanzanians be prepared to subsidise Kenyans? If not, who is likely to lend money to East Africa for this purpose?

57. On the question of pensions, which is a difficult and complex problem, the Claimant mentioned that the E.A. Governments did not seem to have the same difficulty as E.A.R. & H. This is true, not because their pension liabilities are any less than those of E.A.R. & H. but because up to the present they have received more financial assistance from the British Government than the Common Services Organization has been able to obtain. For example, the Governments have received loan assistance from the British Government for the very heavy payments of commuted

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pensions which have been made during the last two or three years; whereas in the case of E.A.R. & H. these have had to be made from the pensions provisions which have suffered accordingly. If it should not prove possible for E.A.C.S.O. to get additional assistance from the British Government, then this drain on the pensions provisions will continue and in this respect the incidence of pension payments to departing expatriates will for the time being bear more heavily on E.A.C.S.O. than on the three E.A. Governments. However, it must be borne in mind that the pensions assistance which the E.A. Governments have obtained by way of loans will in due course have to be repaid. Their position will therefore not be very different from that of the E.A.R. & H. where the pensions provisions will have to be made good over a long period perhaps approximating to the periods during which the Governments will have to make repayments of their loans.

58. The Claimant has time and again tried to suggest that the payments of compensation to expatriates have contributed to the difficult E.A.R. & H. financial situation. This is simply not true. Under the Overseas Aid Scheme half of the compensation has been received from the British Government as an outright grant and the other half although to be paid ultimately by E.A.R. & H. has been covered almost entirely by an interest-free loan. No compensation payments form part of the E.A.R. & H. deficit. The assistance enjoyed by the E.A.R. & H. in this respect is similar to other administrations and the three E.A. Governments.

59. Nor have compensation payments contributed to the overdraft as these payments have, as stated above, been financed by grants or loans. There are several reasons for

the overdraft but the main one is that about £1m. has been paid to suppliers of additional wagons - many of which have already been received - and these payments will in due course be reimbursed from the World Bank loan when it is signed. The Court will realise just how important the World Bank loan is to the E.A.R. & H. as not only will it finance future purchases but the Bank has also agreed to reimburse the E.A.R. & H. for the £1m. already spent in which case the overdraft should be cleared in full. If for any reason, the World Bank loan does not finally materialise, then other steps will have to be taken over a long period to recoup the overdraft if we are to avoid the continuing heavy interest charges levied on it.

60. The Claimant said that he had read that the World Bank loan had now been offered to the E.A.R. & H. and that this indicated confidence in the E.A. economy. The Management are very glad to have been able to negotiate this very substantial loan and agree that it indicates confidence both in the E.A.R. & H. and in East Africa as a whole. However, the loan has many conditions which will have to be satisfied throughout the period of the loan. Management is not in a position to give the Court details of these conditions as they are still being considered by the three Governments before final acceptance but it can be said that the estimates forming the basis of the loan offer assume that E.A.R. & H. wages will not get out of step with wages paid generally in the East African economy, nor with the progressive increase in those wages to which all workers look forward.

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61. In view of the present financial prospects, the adequacy of the recent wage increases and the realationship of E.A.R. & H. minimum wages to those paid in other industries, the Court is asked either (a) to award that the present minimum wages should remain effective at least until 31st December, 1965; or (b) to make no award. This would in effect not debar the Union from taking up its claims again through the normal Industrial Relations Machinery.

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8th June, 1965.

EAR&H: Kenya Industrial Court. Case No. 10 of 1965. Final Submission of EAR&H on the Issue of 'Minimum Wages'. 1965. TS Papers of African Trade Unions: East African Railways and Harbours (EAR&H) Box 1 B8. Nuffield College Library, Oxford University. Decolonization: Politics and Independence in Former Colonial and Commonwealth Territories, link.gale.com/apps/doc/AJFGJK204928637/DPIT?u=webdemo&sid=bookmark-DPIT&xid=1f5e5e25&pg=1. Accessed 4 Dec. 2022.